

## THE STATE OF NEW HAMPSHIRE

### SUPREME COURT

**In Case No. 2004-0456, State of New Hampshire v. Thomas P. Cossette, the court on October 3, 2005 issued the following order:**

The defendant, Thomas P. Cossette, appeals the denial of his motion for a new trial based upon ineffective assistance of counsel. See State v. Cossette, 151 N.H. 355 (2004) (setting forth facts of underlying conviction). We affirm.

To prevail on a claim of ineffective assistance of counsel, a defendant must show that counsel's representation was constitutionally deficient and that the deficient performance actually prejudiced the outcome of the case. See State v. Roy, 148 N.H. 662, 664 (2002) (standard for determining whether counsel's performance constitutionally deficient same under State and Federal Constitutions). "If the defendant is unable to demonstrate such prejudice, we need not even decide whether counsel's performance was deficient." State v. Sanchez, 140 N.H. 162, 163 (1995) (quotations and brackets omitted).

The defendant argues that his trial counsel was ineffective by not adequately presenting new evidence to the trial court. Defense counsel filed a motion for new trial based on the newly discovered evidence; the motion was denied. The defendant contends that his trial counsel should have renewed the motion for new trial after the source of the new evidence testified at the sentencing hearing. We will assume without deciding that this issue has been preserved for appellate review and that the defendant's right to counsel extends to successive motions for new trial.

The testimony presented at the sentencing hearing did not differ significantly from the summary previously provided by defense counsel in his first motion for new trial. Moreover, as hearsay, it was inadmissible on the issues of consent and coercion. State v. Cossette, 151 N.H. at 361-62. Even if we assume without deciding that defense counsel's presentation of the new evidence to the trial court was somehow deficient, based upon the record before us, we find no error in the trial court's ruling. See State v. Flynn, 151 N.H. 378, 390 (2004) (to demonstrate that deficient performance actually prejudiced case defendant must show there is reasonable probability that result of trial would have been different).

Affirmed.

NADEAU, DALIANIS and GALWAY, JJ., concurred.

**Eileen Fox,  
Clerk**